

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF MISSISSIPPI  
GREENVILLE DIVISION**

OSCAR BROOKS,

Plaintiff,

v.

INGRAM BARGE COMPANY and  
JANTRAN INC.

Defendants.

Cause No. 4:07-cv-00062-MPM-EMB

**DEFENDANT INGRAM BARGE COMPANY'S  
MOTION TO EXCLUDE EXPERT TESTIMONY**

COMES NOW Defendant Ingram Barge Company (“Ingram”) and for its Motion to Exclude Evidence states:

1. Plaintiff Oscar Brooks alleges that he was a Jones Act seaman (Compl. Count I, ¶ 2; Count II, ¶ 2), and that he was employed by Defendants as a seaman, captain and member of their crews (Compl. Count I, ¶ 4; Count II ¶ 4).

2. Plaintiff alleges that he suffered severe injuries to his body when he was caused to inhale diesel fumes aboard Defendants’ vessels. (Compl. Count I, ¶ 5; Count II ¶ 5.) Plaintiff filed a six-count Complaint asserting claims under the Jones Act, the general maritime law, and for maintenance and cure. Counts I, III, and V are directed to Ingram Barge Company (“Ingram”), and allege claims for negligence under the Jones Act, unseaworthiness under the general maritime law, and for maintenance and cure, respectively. (Compl.) Counts II, IV, and VI are directed to Jantran, Inc. (“Jantran”), and allege claims for negligence under the Jones Act, unseaworthiness under the general maritime law, and for maintenance and cure, respectively. (Compl.)

3. Defendants deny they are responsible for any injuries to Plaintiff. (Answer of Def. Ingram; Answer of Def. Jantran.) Ingram alleges that if Plaintiff was injured as alleged, his lung cancer was caused by his own negligence, as Mr. Brooks was a heavy cigarette smoker for many years. (Answer of Def. Ingram ¶ 10.)

4. The parties have exchanged written discovery and taken numerous depositions, including those of the plaintiff, and his treating physicians (Dr. Prosser, Dr. Maddox, and Dr. Safar). Plaintiff has identified two expert witnesses, David Goldsmith, Ph.D., an epidemiologist, and Louis Hamer, M.D., a pulmonary physician, and Defendants have deposed them. Defendants have identified three expert witnesses: Dr. Morton Corn, Professor Emeritus at the Johns Hopkins School of Public Health, Dr. Mark Utell, an epidemiologist and Professor of Medicine at the University of Rochester, and Dr. William Pinkston, a pulmonary physician from Jacksonville, MS. Defendants' expert witnesses have issued reports regarding their opinions in this case, and Plaintiff chose not to depose them.

5. Evidence of a causal relationship between exposure to diesel exhaust and lung cancer is not based on scientifically valid reasoning and methodology.

6. The epidemiologic studies on which Plaintiff's experts rely cannot properly be applied to the facts of this case.

7. All evidence and expert testimony of a causal relationship between exposure to diesel exhaust and lung cancer, and all evidence that Plaintiff's lung cancer was caused or contributed to by diesel fume exposure on Defendants' vessels, should be excluded.

8. Ingram has filed a memorandum of law in support of this motion, which is incorporated herein by reference.

WHEREFORE Defendant Ingram prays that this Court enter its order excluding all

evidence and expert testimony of a causal relationship between exposure to diesel exhaust and lung cancer and that Plaintiff's lung cancer was caused by exposure to diesel exhaust fumes when he worked aboard Defendants' towboats.

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ATTORNEYS FOR DEFENDANT  
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that, on July 31, 2008, the undersigned caused the foregoing to be served in accordance with the Court's electronic case management system upon:

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